

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 14-O-01464-PEM
)	
ANANA JOHARI RICE,)	
)	DECISION AND ORDER OF
Member No. 209795,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

In this matter, respondent Anana Johari Rice was charged with six counts of misconduct stemming from a single client matter. Respondent failed to participate either in person or through counsel, and her default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on November 29, 2000, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 27, 2014, the State Bar properly filed and served an NDC on respondent by certified mail, return receipt requested, at her membership records address. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was not returned to the State Bar by the U.S. Postal Service as undeliverable or for any other reason.

In addition, reasonable diligence was also used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. These efforts included contacting the Office of Probation of the State Bar of California to see if respondent's assigned probation deputy could provide any additional contact information, calling respondent at her membership records telephone number, conducting an internet search for additional contact information, and sending an email to respondent at her membership records email address.

Respondent failed to file a response to the NDC. On December 2, 2014, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if she did not timely move to set aside her

default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default was entered on December 16, 2014. The order entering the default was served on respondent at her membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and she has remained inactively enrolled since that time.

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On March 27, 2015, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has another disciplinary matter pending; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on April 27, 2015.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on July 9, 2014, in case no. S218356 (State Bar Court case nos. 13-O-11746, et al.), respondent was suspended for two years, the execution of which was stayed, and she was placed on probation for two years, including a minimum period of actual suspension of one year and until payment of restitution. In this matter, respondent stipulated to thirteen counts of misconduct in five client matters, including failing to perform legal services with competence (four counts), failing to respond to reasonable client status inquiries (three counts), failing to return unearned fees (four counts), and failing to account (two counts).

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The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

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Count One – respondent willfully violated Rules of Professional Conduct, rule 3-700(A)(2) (improper withdrawal) by effectively terminating her employment without notice.

Count Two – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly turn over her client's papers and property upon her client's request following termination of employment.

Count Three – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

Count Four – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account) by failing to provide her client with an accounting.³

Count Five – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond to client inquiries) by failing to respond to multiple client status inquiries received between approximately May and December 2013.

Count Six – respondent willfully violated section 6068, subdivision (j) (failure to update membership address) by vacating her office and failing to update her State Bar official membership records address within 30 days thereafter.

³ In Count Four, the NDC appears to contain a typographical error stating that respondent's client paid advanced fees of "\$31162.52." All other fee references in the NDC state that the client paid "\$3116.52."

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and respondent's disbarment is recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of her default, as the State Bar properly served her with the NDC and made various efforts to locate respondent, including contacting the Office of Probation of the State Bar of California to see if respondent's assigned probation deputy could provide any additional contact information, calling respondent at her membership records telephone number, conducting an internet search for additional contact information, and sending an email to respondent at her membership records email address;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Anana Johari Rice be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

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Restitution

The court also recommends that respondent be ordered to make restitution to Frank Ayala in the amount of \$3,116.52 plus 10 percent interest per year from August 21, 2013. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Anana Johari Rice, State Bar number 209795, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: May ____, 2015

Pat McElroy
Judge of the State Bar Court